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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 248

HYMAN J. BERG, Doing Business As Berg Truck and Parts Company,

Petitioner,

vs.

SAMUEL SCHREIBER and HARRY SCHREIBER, Doing Business as Schreiber Trucking Co.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Alfred Kamin,
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No. 248

HYMAN J. BERG, DOING BUSINESS AS BERG TRUCK AND PARTS COMPANY,

Petitioner,

vs.

SAMUEL SCHREIBER AND HARRY SCHREIBER, DOING BUSINESS AS SCHREIBER TRUCKING CO.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

Hyman J. Berg, doing business as Berg Truck and Parts Company, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Illinois, entered in the above entitled case on March 22, 1950. (R. 34) Petition for Rehearing was denied on May 15, 1950. (R. 35)

Opinions Below

The opinion of the Appellate Court of Illinois is reported in 337 Ill. App. 477. The opinion of the Supreme Court of Illinois is reported in 405 Ill. 528 which has not been bound but is reported in the advance sheets.

Jurisdiction

Jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257(3). This case involves the interpretation of a Federal Statute and a United States Supreme Court decision by a state court. The lawsuit was instituted by the plaintiff for damages received to his property while being transported by the defendant in an interstate shipment from Butler, Pennsylvania, to Chicago, Illinois. No state law is involved in this cause of action. There is no question of overlapping of a Federal Statute and a State Statute, nor is there a question of jurisdiction. Federal Statutes and Federal decisions were used to decide this case. It is well settled that rights and obligations growing out of interstate shipments moving under the uniform bill of lading are Federal questions. *Chesapeake & Ohio Railway Co.* v. *Martin,* 283 U. S. 209 (1931); *Illinois Steel Co.* v. *Baltimore & Ohio Railway Co.,* 320 U. S. 508 (1944).

The Federal question was originally raised in the pleadings (R. 3) in the lower court. It was also raised in the Appellate and Supreme Courts and mentioned in their decisions.

A judgment was entered in favor of the plaintiff in the Superior Court of Cook County, Illinois, in the sum of $3216.83 on July 15, 1948. Defendant appealed to the Appellate Court of Illinois, 1st Division, who rendered an opinion reversing the trial judge without remandment. Upon petition for rehearing the Appellate Court rendered an additional opinion with one of the 3 justices dissenting. An appeal was taken to the Supreme Court of Illinois and on March 22, 1950, they affirmed the decision of the Appellate Court. A petition for rehearing was denied on May 15, 1950.

Statute Involved

Title 49—Transportation. Sec. 20—Reports, Records, etc.

Par. 11—Liability of initial carrier for loss; limitation of liability; notice and filing of claim.

"Provided further, that it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice."

Question

Whether the Supreme Court of Illinois followed the decisions of the United States Supreme Court in the interpretation of the Federal statute U. S. C. Title 49, Sec. 20, Par. 11, in determining whether sufficient notice in writing was given under the statute, or whether notice in writing was necessary at all in this case.

Statement

Plaintiff shipped a large quantity of auto parts via the defendant's trucking line which was an interstate common carrier. En route from Butler, Pennsylvania, to Chicago, Illinois, the truck of the defendants which was solely carrying new merchandise of the plaintiff (R. 23) was damaged as was the cargo (R. 8). Plaintiff refused delivery of the cargo whereby the defendant removed the merchandise to its own terminal (R. 8) until a meeting could be arranged between the parties to determine what damages were suffered by the plaintiff. Ten or twelve days after this damage occurred the defendant's agent had the truck and damaged merchandise brought to the plaintiff's place of business

thereupon the truck was unloaded and a list made of the damaged auto parts as they unloaded the truck. (R. 96). The agent of the defendant supervised the sorting and separating out of the merchandise. (R. 96). The agent of the defendant made the written list for both parties as they had to work together on the job due to the nature and size of these auto parts. (R. 96). The written list was completed on that same day and a copy made for each party. (R. 9). At no time did the plaintiff have control of the shipment and auto parts from the time they were loaded on the truck until the written list was made for both parties 10 to 12 days after the damaged merchandise was received in Chicago. All information as to how the merchandise was damaged was solely within the defendant's knowledge. The written list made by both parties as to the damages was the only knowledge the defendant needed to complete the investigation thoroughly. Defendant at no time contested the value of the merchandise nor did they present any evidence to contest the value of it. The trial judge and the Justice of the Appellate Court who wrote the dissenting opinion held that this written list was sufficient compliance of the aforestated statute. Majority of the Appellate Court Justices and the Supreme Court held to the contrary and barred recovery.

Reasons for Granting the Writ

The plaintiff has been denied his right under Federal law by the decision of the Supreme Court of Illinois in this matter. This is the first case decided by the State of Illinois Supreme and Appellate Courts that this writer could find involving this particular question. No prior Illinois State decision covers the point involved in this case. There is one United States Supreme Court decision, namely, *Georgia, Florida, & Alabama Railway Company* v. *Blish Milling Company*, 241 U. S. 190, which is in direct point. Now there is

one additional Federal court decision on direct point which was decided by the Circuit Court of Appeals, 7th Circuit, namely, Hopper Paper Co. v. Baltimore & Ohio Railway Co., 178 F. 2d 179. This case was decided a short time after our case and covers the same points covered in our case. This court refused certiorari in the "Hopper" case on April 24, 1950. Both of the above cited cases are Federal interpretations of a Federal law and both are contrary to the decision rendered by the Supreme Court of Illinois in our matter.

The "Hopper" case was filed in the United States District Court for the Southern District of Illinois. The lower court and the Circuit Court of Appeals, 7th Circuit, each decided that case directly opposite to the decision of the Illinois Supreme Court. In both decisions they also quote the "Blish" case and interpret it in the same manner as the United States Supreme Court but the State Supreme Court did not do so. This leaves our jurisdiction with two cases which are in direct conflict with each other and both decided approximately at the same time. This leaves litigants in a precarious position in a suit of this nature and might lose them their Federal rights. Why should a state court have the right to interpret a Federal law differently than the Federal courts on solely a Federal question? They have done so in this case. They refused to observe the highest court of the land and this should not be permitted. Reading the "Berg" decision and the "Hopper" and "Blish" decisions makes one wonder whether the state court wanted to deliberately make their own law in the interpretation of a Federal statute. If certiorari is denied in this case the state court would be permitted to rule supreme over the highest Federal courts in the interpretation of a Federal question and a Federal law. To permit this would not be justice and would deny litigants of their Federal rights under the law. To permit this Illinois decision would also do great harm as

this is a case of first impression on this point in Illinois and a bad precedent would be started which would endanger future litigants involving this point of law.

The "*Hopper*" case and this case have similar facts. It might be said that the facts are even stronger in this case as a written list was made by both parties of the damages. The court stated in the "*Hopper*" case that "In the instant case it is undisputed that defendant and its agents were fully aware and cognizant of the existence of all the facts concerning the wreck and destruction of the carload of paper. In such a situation a formal notice by plaintiff to the defendant could not have accomplished anything more. Hence, we conclude that the carrier may not use the provisions of the bill of lading to shield itself from the liability imposed upon it by the statute and the common law for its negligent destruction of the shipper's property. To hold otherwise would not be construing the bill of lading 'in a practical way.' " In this case the defendant had the same full knowledge of all the loss and the claim. He even kept possession of the merchandise until a joint list could be made to list the exact damages. (R. 26)

The State courts were not cited in the "*Hopper*" case as it was concurrent and the publishing of the case was not out until after all briefs were due in this case. However, the same point was cited the appellate courts by the plaintiff and the following citations were given them on this particular point of actual knowledge by the defendant:

9 Am. Jur., Sec. 803;

Indiana Harbor Belt R. Co. v. *Alpirin,* 1941, 296 N. W. 158.

The courts ignored this point and did not even discuss it. These cases were also cited in the "*Hopper*" case which brought about a direct opposite conclusion.

It should be noted that the *"Hopper"* case fully covers all Federal decisions and interpretations of this Federal law whereas the state court does not. Since the *"Hopper"* case reached the opposite conclusion of the state court, and since this court denied certiorari in the *"Hopper"* case the state decision of our case must definitely be erroneous and should not be permitted to stand.

The important rulings of the *"Blish"* case which pertain to this case are found on pp. 196, 197, and 198, of that opinion. On those pages the Supreme Court of the United States said, "The purpose of the stipulation is not to escape liability but to facilitate prompt investigation." (Italics ours) They also said, "granting that the stipulation is applicable and valid, it does not require documents in a particular form. It is addressed to a practical exigency and is to be construed in a practical way." (Italics ours). These are the words the State Courts failed to apply in deciding this case. Had they applied this clear, concise and direct language of the Supreme Court of the United States their decision would have to be different. Both state courts just say "there was no writing" and dismiss the case thus forfeiting the plaintiff's rights under the Federal law. Only the trial judge and the Appellate Justice who wrote the dissenting opinion took full cognizance of the ruling of this court in the *"Blish"* case.

Was there a written instrument? Yes, there was. It was made by both parties. It was a joint venture. Because of the nature of the articles, namely, auto parts, it was the only practical way to get the list of damages. One person had to supervise and write the list while the other did the manual labor. In this way both parties could examine them and see which were good and which were damaged. (R. 26) Naturally the insurance adjuster, a white collar worker, had to write the list while the other man did the manual labor. Each person inspected each part, and then the dupli-

cate list was made for both parties. The defendant's agent said "I made a written list of loss on the damaged parts. Both parties were present. We had to work together." (R. 26) Was not this the practical way to handle this matter?

We thus have two parts to this case whereby the State Courts failed to follow the Federal law in the interpretation of a Federal statute. The first is that they failed to follow the *"Blish"* case in holding that this written instrument made by both parties was sufficient compliance with the law, and secondly, they failed to follow the law as laid down in the *"Hopper"* case that no written instrument was necessary where the defendant had actual knowledge. The State Supreme Court of Illinois thereby failed to follow the Federal interpretations of a Federal law and thus certiorari should be granted. Had they followed either the *"Bliss"* case alone or the *"Hopper"* case alone they should have held for the plaintiff and upheld the lower court who followed the law of the land.

The State Court should not be permitted to deny litigants of their Federal rights in the interpretation of a Federal statute as they did in this case. Future litigants involving the same point of law will suffer and be denied their rights if this decision is permitted to exist.

Conclusion

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

ALFRED KAMIN,
HAROLD A. LIEBENSON,
HARRY J. DIRECTOR,
ALBERT M. SHEPPARD,
Counsel for Petitioner.

SEP 20 1950
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HYMAN J. BERG, doing Business as Berg Truck and Parts Company,

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

LAWRENCE C. MILLS,
JOHN W. MILLS,
Counsel for Respondents.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTION.

Whether, in accordance with the Standard Bill of Lading adopted and filed by the carrier with the Interstate Commerce Commission, the shipper complied with the requirement that a claim be filed in writing within nine months after delivery as a condition precedent to recovery.[1]

[1] An additional question is involved in the event certiorari is granted.

Whether the trial court allowed the plaintiff more than his full actual loss, the measure of damages set forth in the statute.

STATEMENT.

The statement of facts set forth in the brief filed by the petitioner herein is so incomplete and inaccurate that it may give this court an erroneous impression of the facts and circumstances surrounding the transaction here involved. Respondent, therefore, sets forth below a short statement of all the facts applicable.

On August 17, 1945 the petitioner, as plaintiff in the trial court purchased a large quantity of assorted jeep parts in Butler, Pennsylvania (R. 8). These parts were classified as new, although they had been manufactured in the year 1941 (R. 11). The plaintiff paid $10,000 for the parts, (R. 30) which were listed in the manufacturer's catalog at $65,000.00 (R. 19) and were no longer in manufacture at the time plaintiff purchased them (R. 17). In the shipment of the parts from Butler, Pennsylvania to Chicago, Illinois, one of several truck loads overturned and certain of the parts on that truck were damaged (R. 8). The plaintiff refused delivery of the cargo and the respondent as defendant in the trial court, removed the merchandise to its own terminal (R. 8). On an examination of the damaged parts some ten days after, the insurance adjuster for the carrier and the plaintiff sorted the merchandise separating the good parts from the damaged parts at which time certain of the items were rejected by the plaintiff (R. 26). A written list was made by the insurance adjuster (R. 12) and a copy delivered to the plaintiff. The items in parenthesis in the rejected column were in pencil and were added to the list by the defendant's counsel prior to the trial (R. 9). After the rejected parts were delivered to the plaintiff the major portion of the rejected parts were repaired and salvaged by the plaintiff (R. 10).

Following the discussion between the plaintiff and the defendant, numerous telephone conversations took place in which the defendant's insurance adjuster repeatedly requested a written notice of claim. Forms entitled "Loss and Damage Claim Form" were sent to the plaintiff by the defendant's adjuster and no written claim of loss was ever made by the plaintiff, but only a verbal claim was made. The defendant's adjuster refused to make any commitment until the written proof of loss was received (R. 26).

The petitioner has stated in his statement of facts on page 4 of the Petition for Certiorari "Defendant at no time contested the value of the merchandise nor did they present any evidence to contest the value of it."

The record is silent as to any discussion between the parties as to claim for money damages or the value of the goods shipped at the time of the transaction. During the trial the plaintiff testified that he did not pay the fair reasonable market price for any of the merchandise (R. 15) but that such was the measure of his damage (R. 10-11). The defendant produced two witnesses, namely, the sellers, who testified that the fair market value of the parts was the price paid for them (R. 20 to 23 incl.).

Although this was a verbal contract for the transportation of goods in interstate commerce, no written bill of lading was issued. However, the uniform bill of lading is set out in the classification regularly filed with the Interstate Commerce Commission and published as required by law (R. 27-28) provides in part, as follows:

"Contract Terms and Conditions * * * Sec. 2(b):

> As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or car-

rier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid).

REASONS FOR DENYING THE WRIT.

Both the petitioner and respondent agree that the case of *Georgia, Florida & Alabama Railway Company* v. *Blish Milling Company,* 241 U. S. 190 is controlling. As a matter of fact, both opinions of the Illinois Supreme Court and the majority and minority opinions of the Illinois Appellate Court agree that the *Blish Milling* case is controlling.

The issue involved is one of fact and not a question of substantive law in the interpretations of the provisions of the bill of lading, which requires a written notice of claim. It is apparent that no written claim for damages was filed within the meaning of the bill of lading. There may be a question of whether or not the carrier had sufficient notice or knowledge of the facts and circumstances so that the provision may be unnecessary or waived, but in situations of this kind each case depends upon its own facts.

There is nothing about this case which will be detrimental to the general state of the law nor to the proper disposition of cases that may hereafter arise.

SUMMARY OF ARGUMENT.

Where a carrier has only partial information as to a loss by a shipper, a decision denying recovery on the basis that no written claim for damages was filed within nine months after delivery of damaged merchandise as required by the bill of lading, is correct.

a.

Such holding is not in conflict with decisions of this court.

b.

The Supreme Court of Illinois followed the decisions of this court.

c.

Applying the facts in this case to the well settled law.

ARGUMENT.

Where a carrier has only partial information as to a loss by a shipper, a decision denying recovery on the basis that no written claim for damages was filed within nine months after delivery of damaged merchandise as required by the bill of lading, is correct.

a.

Such holding is not in conflict with decisions of this court.

Petitioner's argument seems to be predicated on the theory that the Supreme Court of Illinois did not follow the law and the decisions of this court. It is apparent that the petitioner filed no claim in writing within the meaning of the standard bill of lading and under the applicable decisions of this court, the plaintiff is barred from bringing his action. *Southern Pacific Company* v. *Stewart,* 248 U.S. 446; *Baltimore & Ohio Railroad Co.* v. *Leach,* 249 U.S. 217; *St. Louis, Iron Mountain & Southern Railway Co.* v. *Starbird,* 243 U.S. 592; *Georgia, Florida & Alabama Railroad Company* v. *Blish Milling Company,* 241 U.S. 190.

In all the cases above cited the carrier had some notice or knowledge of the loss, but only in the last mentioned case, the *Blish Milling Company,* was there the equivalent of a written claim for damages.

In the case of *Southern Pacific Company* v. *Stewart,* 248 U.S. 446, the evidence showed that at destination one of several injured animals remained in the car for several days and that immediately after unloading and daily for sometime thereafter the shipper and the railroad agents

were in contact with one another relating to the damages sustained. This court said, on page 449:

> "Considering the principles and conclusions approved by our opinions in *St. Louis, I. M. & S. R. Co.* v. *Starbird,* 243 U.S. 592, 61 L. ed. 917, 37 Sup. Ct. Rep. 462, and *Erie R. Co.* v. *Stone,* 244 U.S. 332, 61 L. ed. 1173, 37 Sup. Ct. Rep. 633, (announced since the judgment below), and the cases therein cited, no extended discussion is necessary to show that upon the facts here disclosed the stipulation between the parties as to notice in writing within ten days of any claims for damages was valid And we also think those opinions make it clear that the circumstances relied upon by the shipper are inadequate to show a waiver by the carrier of written notice as required by the contract."

Baltimore and Ohio Railroad Co. v. *Leach,* 249 U.S. 217, involved damage to livestock shipped under a bill of lading requiring written claim for damages within five days. In that case only oral claim was made and this court held that the written claim provision had not been waived.

In *St. Louis, Iron Mountain & Southern Railway Co.* v. *Starbird,* 243 U.S. 592, there was a shipment under a bill of lading requiring claims for damages to be filed within thirty-six hours after notice of arrival at place of delivery. This was an interstate shipment of peaches. There was considerable evidence showing that the superintendent of the dock of the carrier knew of the condition of the cars and received verbal notice of the condition. This court held that the verbal notice was insufficient to waive the requirement of a written claim.

Georgia, Florida and Alabama Railway Company v. *Blish Milling Company,* 241 U.S. 190, relied upon by the petitioner herein, involved an interstate shipment of flour. The facts show that the invoice was attached to

the bill of lading and after the flour was damaged in shipment a series of telegrams were exchanged between the carrier and the shipper. The final telegram sent by the milling company to the carrier read as follows: "We will make claim against railroad for entire contents of car at invoice price. Must refuse shipment as we cannot handle." This court held that the telegram above cited was substantially in compliance with a written claim for damages and taken with the other telegrams gave the shipper notice of all the conditions which the written claim would have given. On page 198 the court stated as follows:

> "In the preceding telegrams, which passed between the parties and are detailed by the state court in stating the facts, the shipment had been adequately identified, so that this final telegram taken with the others established beyond question the particular shipment to which the claim referred and was in substance the making of a claim within the meaning of the stipulation,—the object of which was to secure reasonable notice. *We think that it sufficiently apprised the carrier of the character of the claim, for while it stated that the claim was for the entire contents of the car 'at invoice price' this did not constitute such a variance from the claim for the value of the flour as to be misleading;* and it is plain that no prejudice resulted. Granting that the stipulation is applicable and valid, it does not require documents in a particular form. It is addressed to a practical exigency and it is to be construed in a practical way. The stipulation required that the claim should be made in writing, but a telegram which in itself or taken with other telegrams contained an adequate statement must be deemed to satisfy this requirement. See *Ryan* v. *United States,* 136 U.S. 68; *Kleinhans* v. *Jones,* 68 Fed. Rep. 742, 745; *Godwin* v. *Francis,* L.R. 5 C.P. 295; *Queen* v. *Riley* (1896), I Q.B. 309, 314, 321; *Howley* v. *Whipple,* 48 N.H. 487, 488;

State v. *Holmes,* 56 Iowa, 588, 590," (Emphasis supplied).

The case of *Hopper Paper Co.* v. *Baltimore & Ohio R. Co.,* 178 F. 2d 179, (Cert. den. U.S. Supreme Court, April 24, 1950, 1949 Docket No. 665) also relied upon by the petitioner, involved a similar situation to the *Blish* case, namely, a series of telegrams and coupled with the fact that the carrier had sold the goods shipped as salvage without the plaintiff's knowledge for $100. Both the *"Blish"* case and the *"Hopper"* case demonstrated that the carrier had more knowledge and information than did the shipper for the purpose of the claim. In the case at bar the carrier had no knowledge of the value of the merchandise nor the amount which would be claimed for the value thereof, nor which of the rejected items were salvageable. It has been demonstrated that the majority of the merchandise originally rejected were salvaged by the plaintiff herein after the merchandise had been delivered to him. If subsequently, the plaintiff had advised the carrier which articles had been repaired and salvaged and the value of the remaining articles unsalvageable by a simple memorandum, the requirement of a notice of claim in writing would have been met.

b.

The Supreme Court of Illinois followed the decisions of this court.

Recognizing the principles already mentioned, the Supreme Court of Illinois followed those decisions and cited the *Blish* case, *supra,* as controlling. Certain portions of the decision are here quoted for the convenience of the court (R. 32):

> "We believe that the case of *Georgia, Florida & Alabama Railway Co.* v. *Blish Milling Co.,* 241 U.S. 190, 60 L. ed. 948, is controlling. * * *

"Under the Interstate Commerce Act and defendants' bill of lading it was incumbent upon the plaintiff to make a claim in writing, and to do so within the time fixed by law. The plaintiff made no claim whatsoever in writing, but simply gave a list to the defendants' insurance adjuster, and even though the claimant had prepared and filed a document similar to that prepared and filed a document similar to that prepared by the adjuster it would not be sufficient in order to comply with the provisions of the Interstate Commerce Act. The document said to constitute a claim gives only the number of items in figures, and those delivered in good condition, and those rejected. There is no price or value of the articles; no statement of whether it is a total or a partial loss; no dates other than the date of shipment, and nothing which would comply with the ordinary requirements of a claim for loss of goods or damages to the same.

"From the facts in this case we can readily understand why a claim became desirable, because the purchase was of jeep parts, and of machinery to be used in connection with the jeeps, which were sold at a price greatly under the manufacturers' price, and apparently came from army stores. The Interstate Commerce Act requires a claim in writing to be made, and in the absence of such a claim being made within nine months, the plaintiff is barred from bringing and maintaining his action. *St. Louis, Iron Mountain & Southern Railway Co.* v. *Starbird,* Admr. 243 U.S. 592, 61 L. ed. 917; *Southern Pacific Company* v. *Stewart,* 248 U.S. 446, 63 L. ed. 350. • • •

"In the instant case the plaintiff really did nothing except at the request of the defendants' insurance adjuster furnished certain items orally, which were transcribed by the adjuster in the form indicated above, and in fact, refused to furnish any claim at the request and demand of the adjuster. Since the regulation is clear, and was not complied with, and the authority relied upon is the *Blish* case, which with

respect to the facts in the present case does not aid plaintiff, we are required to conclude that the judgment of the Appellate Court was correct, and it is accordingly affirmed.

"Judgment affirmed."

c.

Applying the facts in this case to the well settled law.

There are no facts or circumstances in the case at bar which are at all analogous to the *Blish* case or to the *Hopper* case. In the *Hopper* case above cited, the Circuit Court of Appeals for the Seventh Circuit states as follows:

> "We cannot agree that where a carrier has full knowledge of a loss caused by its admitted negligence and the written record thereof in its files, the allowance of a recovery for the admitted value of the loss could be considered as discrimination in favor of the shipper or against the carrier."

That decision and that of the *Blish Milling Company* case, *supra,* have thus defined the elements which a written claim would require—where a carrier has or is chargeable with actual knowledge of all the conditions as to damages that a written notice would give, a notice of claim for damages is excused. In our case the carrier had no means of knowing which items were salvageable nor the value of the damaged items. There was a variance between the items originally rejected by the petitioner and those later sued for.

The court's attention is respectfully directed to plaintiff's Exhibit 2 (R. 12). Since the original document was lithographed and appears in the folio on pages 17-18 the respondent would respectfully request that the judges of this Honorable Court examine the original lithographed copy to note the penciled memoranda which were added later by the respondent's attorney (R. 9). In its original

condition the penciled memoranda did not appear. In the words of the Illinois Supreme Court "Even though the claimant had prepared and filed a document similar to that prepared by the adjuster, it would not be sufficient in order to comply". It has been demonstrated that one of the most important elements of a claim for damages is a statement as to its value and this is apparent from an examination of the following cases. *Georgia, Florida & Alabama R. Co.* v. *Blish Milling Co.*, 241 U. S. 190; *Manby* v. *Union Pacific Railroad Co.*, 10 F (2d) 327.

CONCLUSION.

It is submitted that the judgment of the Supreme Court of Illinois is correct and that this court should deny its writ of certiorari to review the same.

Respectfully submitted,

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